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Public Utility Commission of Texas

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Marlene H. Dortch - Secretary
Federal Communications Commission
445 Twelfth Street, S.W. - TWA 325
Washington, D.C. 20554

Irene Flannery - Vice-President of High Cost and Low Income Divisions
Universal Service Administrative Company
2000 L. Street, NW - Suite 200
Washington, D.C. 20036

November 15, 2005

RE: Federal-State Joint Board on Universal Service, CC Docket No. 96-45

TX PUC Project No. 25787 - FCC Letters Regarding ETC Designation Pursuant to FTA '96 §214(e) (2)

Docket No. 31724 - Application of Caprock Cellular Limited Partnership (Caprock Cellular) for Designation as an Eligible Telecommunications Carrier Pursuant to 47 U.S.C. 241(e) and P.U.C. Subst. R. 26.418

Docket No. 24481 - Designation of Common Carriers as Eligible Telecommunications Carrier to receive Federal Universal Funds Pursuant to the Federal Communications Commission's Fourteenth Report and Order Adopting A State Certification Process

Designation of Caprock Cellular Limited Partnership - ETC Designation Amendment

Pursuant to Section 214(e) (2) of the Communications Act of 1934, as amended (the "Act") and 47 C.F.R. sections 54.201 - 54.203, the Texas Public Utility Commission (TPUC) has granted eligible telecommunications carrier (ETC) designation to Caprock Cellular Limited Partnership (Caprock Cellular) for the exchanges of Cap Rock telephone Cooperative, Inc. The attached *Final Order*, Docket No. 31724, issued on November 7, 2005, grants the designation.

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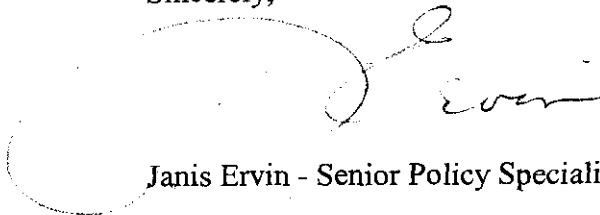
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If you require any additional information please call Janis Ervin at (512)-936-7372.

Sincerely,



Janis Ervin - Senior Policy Specialist

Infrastructure Reliability Division - Texas Public Utility Commission

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DOCKET NO. 31724

FCC - MAILROOM

APPLICATION OF CAPROCK
CELLULAR LIMITED PARTNERSHIP
FOR DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER
(ETC)

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PUBLIC UTILITY COMMISSION
OF TEXAS

ORDER NO. 3

**NOTICE OF APPROVAL FOR DESIGNATION AS
AN ELIGIBLE TELECOMMUNICATIONS CARRIER (ETC)**

Procedural History

On September 22, 2005, Caprock Cellular Limited Partnership (Caprock Cellular) filed an application for designation as an eligible telecommunications carrier (ETC) pursuant to 47 U.S.C. § 214(e) and P.U.C. SUBST. R. 26.418. Caprock Cellular is a common carrier providing Commercial Mobile Radio Services.

Caprock Cellular's initial application sought federal universal service support for the entire service area of Cap Rock Telephone Cooperative, Inc. (Cap Rock Coop) and for the exchanges of Aspermont, Crosbyton, Lorenzo, Post and Ralls, which are served by Valor Telecommunications of Texas, L.P. (Valor).

On October 4, 2005, Caprock Cellular filed an affidavit as a supplement to its application, noting that if ETC designation was granted, it would provide a plan of unlimited local service for its customers, and that it will comply with any ETC requirements adopted by the commission in response to Federal Communications Commission's (FCC) actions.

On October 27, 2005, Valor filed a motion to intervene in this proceeding, stating that Caprock Cellular must be willing to provide service in Valor's entire study area comprised of 197 exchanges as defined by the FCC. On October 31, 2005, Caprock Cellular filed an amendment to its application, withdrawing its request for support in the Valor exchanges of Aspermont, Crosbyton, Lorenzo, Post, and Ralls. A Valor representative advised Commission Staff (Staff) that as a result of Caprock Cellular's amendment, it intends to file a motion to withdraw its request for intervention. As of this date, that motion has not been filed with the Commission. No party requested a hearing in this docket.

On November 1, 2005, Staff filed a recommendation for approval of ETC status for Caprock Cellular based on the following:

Designation as Eligible Telecommunications Carrier

To qualify for ETC status, a carrier must meet four conditions:¹

1. The carrier must be a common carrier, as that term is defined by the Federal Telecommunications Act of 1996 (FTA '96), Section 3(10).
2. The carrier must offer the following services (requisite services),² using its own facilities or a combination of its own facilities and the resale of another carrier's services:³
 - (a) voice grade access to the public switched network;
 - (b) local usage;
 - (c) dual tone multi frequency signaling or its functional equivalent;
 - (d) single party service or its functional equivalent;
 - (e) access to emergency services, including such services as 911 or enhanced 911;
 - (f) access to operator services;
 - (g) access to interexchange service;
 - (h) access to directory assistance; and
 - (i) toll limitation for qualifying low income customers.⁴
3. The carrier must advertise the availability of and charges for the requisite services in a media of general distribution.⁵

¹ 47 C.F.R. § 54.201(b)-(d) (2001).

² 47 C.F.R. § 54.101 (2001).

³ 47 C.F.R. § 54.201 (2001).

⁴ Pursuant to FTA § 54.400(d), the FCC defines "toll limitation" as either toll blocking or toll control for eligible telecommunications carriers that are incapable of providing both service.

⁵ *Id.*

4. The carrier must provide Lifeline and Link Up support, and may not collect a deposit from a customer receiving such support if the customer also elects toll blocking.⁶

Caprock Cellular meets all of the above criteria. Caprock Cellular will advertise the designated services and their rates through marketing advertisements using media of general distribution. Caprock Cellular provides the required services through a combination of its own facilities and resale of another carrier's services when necessary. Caprock Cellular has made a commitment to offer Lifeline and Link-Up support and has provided a revised tariff with its application which it has committed to adopt upon designation. In addition, Caprock Cellular's proposed Lifeline tariff indicates that it will participate in the automatic enrollment process for low-income customers.

Caprock Cellular has not requested any waiver of the FCC requirements. Cap Rock Coop is a rural incumbent local exchange carrier that serves the exchanges for which Caprock Cellular requests universal service fund support. 47 C.F.R. § 54.201(c) states:

Upon request and consistent with the public interest, convenience, and necessity, the state commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the state commission, so long as each additional requesting carrier meets the requirements of paragraph (D) of this section.

Caprock Cellular has provided well-defined maps of its service area and has committed itself to serve any customer within its area and to abide by the FCC's regulations regarding Phase II E-911 service. In addition, Caprock Cellular's application addressed the Commission's request for competitive carrier's entering rural areas to provide service that enhances or exceeds existing telecommunications service. Caprock Cellular stated its intention to provide substantial network investment for the purpose of providing improved signal quality, GSM technology and improved system reliability upon its designation.

⁶ 47 C.F.R. § 54.405 (2001).

Staff stated that Caprock Cellular's application is in the public interest. Staff recommended that Caprock Cellular be granted ETC designation and that it be required to file its revised Lifeline Service Tariff in Project No. 27385 for the public record.

Ordering Paragraph

In accordance with Staff's recommendation and for all the reasons stated therein, pursuant to the FTA § 214(e)(2) and P.U.C. SUBST. R. 26.418, Caprock Cellular's application for ETC designation is **APPROVED** effective November 7, 2005. Caprock Cellular is granted ETC status in the entire service area of Cap Rock Coop.

SIGNED AT AUSTIN, TEXAS the 7th day of November 2005.

PUBLIC UTILITY COMMISSION OF TEXAS

A handwritten signature in cursive script, appearing to read "Irene Montelongo", is written over a horizontal line.

IRENE MONTELONGO
ADMINISTRATIVE LAW JUDGE

The carrier must also advertise the availability of such services and the rates for the services using media of general distribution. 47 U.S.C. § 214(e)(1)(B).

4. The FCC has designated the following services or functionalities as those supported by federal universal service support mechanisms: (1) voice grade access to the public switched network; (2) local usage; (3) dual tone multi-frequency signaling or its functional equal; (4) single party service or its functional equivalent; (5) access to emergency services; (6) access to operator services; (7) access to interexchange service; (8) access to directory assistance; and (9) toll limitation for qualifying low-income consumers. 47 C.F.R. § 54.101(a).

5. As part of its obligations as an ETC, an ETC is required to make available Lifeline and Link Up services to qualifying low-income consumers. 47 C.F.R. § 54.405; 47 C.F.R. § 54.411.

6. Pursuant to findings of fact 17 through 24, the Commission finds that it will use its prior definition of public interest and the FCC's public interest analysis in *Virginia Cellular*. The Commission declines to adopt the *FCC ETC Order* requirements, given that the order was not released until after briefing had been completed in this case and is not yet effective. See Findings of Fact 21-23.

7. ETC designation cannot be denied because a requesting carrier is not actually providing the service prior to its ETC designation. *Virginia Cellular* at para. 17. The South Dakota Supreme Court has agreed with that interpretation finding that "a carrier need not be presently offering required services before qualifying as an eligible carrier. Likewise, inability to provide service immediately upon designation is not a basis for denying ETC status. New carriers, like incumbent carriers, are required to serve new customers on "reasonable request." *The Filing by GCC License Corporation for Designation as an Eligible Telecommunications Carrier*, 2001 S.D. 32, 623 N.W.2d 474, para. 19 (S.D. 2001).

8. Pursuant to findings of fact 5 through 38, the Commission finds that the Petitioners will offer the supported services, using their own facilities, resale, roaming arrangements, and boundary extensions, throughout the service areas within a reasonable time frame, subject to the conditions listed above.

9. Pursuant to finding of fact 16, the Commission finds that the Petitioners will advertise the availability and the charges for the supported services in the service areas, subject to the conditions listed above.

10. Section 214(e)(5) defines a service area as follows:

The term "service area" means a geographic area established by a State commission (or the [FCC] under paragraph (6)) for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the [FCC] and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410 (c) of this title, establish a different definition of service area for such company.

11. The Commission finds that it shall propose redefining service areas as outlined in findings of fact 39 through 56.

12. Pursuant to findings of facts 17 through 56, the Commission finds it is in the public interest to designate the Petitioners as ETCs in the service areas as listed in findings of facts 58 through 61 and 67 through 68, subject to the conditions listed above. However, the designation of the Petitioners in any service areas that require redefinition will not be effective until, and unless, the FCC concurs in such redefinitions.

It is therefore

ORDERED, that the Petitioners are designated as ETCs in the above listed areas, subject, in some service areas, to the FCC's concurrence with the proposed redefinitions; and it is

FURTHER ORDERED, that designation of the Petitioners in any service areas that require redefinition will not be effective until, and unless, the FCC concurs in such redefinitions; and it is

FURTHER ORDERED, that the Petitioners shall comply with the conditions as listed above.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 6th day of June, 2005. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 6th day of June, 2005.

<p align="center">CERTIFICATE OF SERVICE</p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.</p> <p>By: <u>William Kolbo</u></p> <p>Date: <u>6/6/05</u></p> <p align="center">(OFFICIAL SEAL)</p>
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BY ORDER OF THE COMMISSION:

Gary Hanson
GARY HANSON, Chairman

Robert K. Sahr
ROBERT K. SAHR, Commissioner

Dustin M. Johnson
DUSTIN M. JOHNSON, Commissioner